

**OPINION
47-145**

October 30, 1947 (OPINION)

INSURANCE

RE: Investments by Companies

This office is in receipt of your letter of October 25 and contents of same have been noted.

You call attention to section 26-0811 of the North Dakota Revised Code of 1943, as amended by chapter 217, of the Session Laws of 1947 with special reference to subdivision 12 of said amendment enumerating securities in which domestic insurance companies may invest their funds. Subdivisions 1 to 11, both inclusive, of said chapter 217 classifies the various types of securities in which domestic insurance companies may invest and such securities are described somewhat in detail and the nature and character of such securities are specified in detail.

Then follows subdivision 12 which reads as follows:

"In loans, securities, or investments in addition to those permitted in this section, whether or not such loans, securities, or investments qualify or are permitted as legal investments under its chapter, or under other provisions of the laws of this state. The aggregate of such company's investments under this subsection shall not at any time exceed five percent of such company's admitted assets, nor more than an amount equal to company's unassigned surplus whichever be less.

"Nothing in this section shall be construed as prohibiting a company from taking any action deemed necessary or expedient for the protection or investments made by it or from accepting in good faith, to protect its interests, securities or property not herein mentioned in payment or to secure debts due to it."

It will be observed that subdivision 12 which we have quoted relates to a class of securities different in character from the securities enumerated and described in subsection 1 to 11. In other words, the securities described in subdivision 12 have none of the characteristics of the securities in the other classifications and must, therefore, be considered in a class by themselves. It was undoubtedly the intention of the Legislature that domestic insurance companies should be permitted to invest their funds in securities other than those enumerated in subdivisions 1 to 11 provided such additional securities are safe investments and comply with the requirements of said subdivision 12.

It is clear, therefore, that said subdivisions 1 to 11 enumerate and describe in detail the kind and character of securities in which domestic insurance companies may invest their funds and it is also clear that subdivision 12 makes provision for investment in other securities not enumerated in the previous subdivisions but which are

safe investments and fixes a limitation of the amount of funds which may be invested therein. We have reference to this part of the statute which provides that, "The aggregate of such company's investments under this subsection shall not at any time exceed five percent of such company's admitted assets, nor more than an amount equal to company's unassigned surplus whichever be less."

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Attorney General